

AMENDED COPY AS OF 5/11/2015

Intro. Res. No. 1260-2015

Laid on Table 3/24/2015

Introduced by Legislators Browning and Hahn

**RESOLUTION NO. -2015, ADOPTING LOCAL LAW
NO. -2015, A LOCAL LAW TO REGULATE "BOARD UP"
BUSINESSES IN SUFFOLK COUNTY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 24, 2015, a proposed local law entitled, "**A LOCAL LAW TO REGULATE "BOARD UP" BUSINESSES IN SUFFOLK COUNTY**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2015, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO REGULATE "BOARD UP" BUSINESSES IN
SUFFOLK COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that many Suffolk County residents have experienced property damages as a result of fire, flooding, hurricane, storm or other hardship event.

This Legislature further finds and determines that persons who sustain damages to their home as a result of a fire or other calamity are faced with many immediate and pressing problems; securing and protecting their damaged property is a fundamental concern.

This Legislature determines that numerous businesses, which board up, tarp or otherwise secure damaged buildings, operate in Suffolk County free of any regulation or oversight.

This Legislature also finds that local emergency responders have expressed concern about the business practices of some of these "board up" businesses. Local firefighters complain that multiple board up businesses descend on fire scenes; that they ignore instructions from the local fire companies that are attempting to manage the scene; that they wear uniforms that cause property owners to believe they are acting in some official capacity; and that they employ high pressure and deceptive practices to win business from home owners.

This Legislature further finds that board up businesses operating within Suffolk County should be regulated to protect consumers from unconscionable and unscrupulous business practices and to ensure that firefighters and other emergency responders can perform their roles without unnecessary distractions and interference.

Therefore, the purpose of this law is to require board up businesses to register with the Department of Labor, Licensing and Consumer Affairs and to comply with minimum consumer protection measures.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

“Board Up Services” – the act of boarding up, tarping or otherwise securing a residential building damaged by fire, flood, hurricane, storm or other emergency event.

“Board Up Business” – any person, corporation, firm, proprietorship or other entity or business organization that engages in a business that provides board up services.

“Commissioner” – the Commissioner of the Department of Labor, Licensing and Consumer Affairs.

“Deceptive Trade Practices” – Any false, falsely disparaging or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency or effect of deceiving or misleading consumers or the consuming public and is made in connection with a contract, preparation of or performance of a work estimate or invoice, in the extension of consumer credit, or in the collection of consumer debts. Deceptive trade practices include, but are not limited to:

A. Representations that:

- (1) Services have sponsorship, approval, characteristics, uses, or benefits that they do not have.
- (2) The seller has a sponsorship, approval, status, affiliation or connection that he/she does not have.

B. The use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact.

C. Failure to state a material fact if such failure deceived or tends to deceive.

D. Disparaging the services or business of another by false or misleading representations of material fact.

E. Offering services without intent to sell them.

F. Making false or misleading representations of fact concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one's own price at a past or future time.

G. Falsely stating that a consumer transaction involves consumer rights, remedies or obligations.

“Department” – the Department of Labor, Licensing and Consumer Affairs.

“Fire Marshal” – a fire marshal duly appointed by or employed by any municipality.

“FRES” – the Department of Fire, Rescue and Emergency Services.

“Identification Card” – a card issued to the holder of a registration, as defined herein, or to the employees of such a holder.

“Registration” – a certificate or document issued to a natural person or business by the Commissioner authorizing the holder to engage in emergency property preservation.

“Unconscionable Trade Practice” – Any act or practice which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of the consumer or which results in a gross disparity between the value received by a consumer and the price paid by the consumer. This term shall include any acts or practices which unfairly take advantage of a sudden disaster, such as hurricanes, tornadoes, flooding, blizzards, explosions, airplane crashes, earthquakes, nuclear war, radiological emergencies, war, civil unrest or disobedience, or acts of God and comparable acts which result in gross disparity between the value received by a consumer and the price ordinarily paid by the consumer in the absence of one of these above occurrences. The existence of such a disaster shall be established, for the purposes of this law, by a written declaration either by the County Executive or a majority of the entire membership of the County Legislature. The Commissioner shall initiate investigation of such unconscionable trade practices immediately after any one of the natural disasters or acts of God described above.

Section 3. Registration Required.

- A. No board up business shall operate within the County of Suffolk unless it has registered with the Department in accordance with the provisions of this section. The initial application fee for registration shall be \$100. Registration shall be filed biannually for a fee of \$200.
- B. Each registrant must provide the following information and appropriate supporting documentation:
 - 1) The name of the board up business.
 - 2) The principal address and the names of all owners of the business.
 - 3) Documents providing proof of public liability and property damage insurance, workers' compensation, or a surety bond.
- C. No applicant for registration or renewal shall have any outstanding judgment for child support against him or her, or be in arrears in child-support payments as determined by official court records or official government records, at the time an application is filed for such registration or renewal. If an applicant has such a judgment against him or her, or is in such arrears, but is current in payments on a judicially approved, or Child Support Enforcement Bureau sanctioned, payment schedule to pay off or reduce such judgment or arrears, then such individual shall not be deemed ineligible for registration or renewal on the grounds of such judgment or arrears. At least 30 days prior to the expiration of a registration, the Office shall send a written notice to a registrant informing said registrant of his or her obligation to comply with the provisions of this section pertaining to compliance with child-support obligations. If necessary, a second written notice shall be sent by the Office to a registrant 60 days after the registration has lapsed, informing said registrant of his or her obligation to comply with the provisions of this section pertaining to compliance with the child-support obligations. In addition, the County Department of

Social Services, through its Child Support Enforcement Bureau, shall notify all current noncustodial parents of the obligations contained herein.

- D. The Department shall provide each board up business which has complied with registration requirements a registration certificate and an identification card, which shall have a registration number and expiration date.
- E. Board up businesses shall display their County registration number on all vehicles and identification used by employees.

Section 4. Identification Card for Salesmen.

- A. It is unlawful for any salesman, other than the individual who subscribes his name to the application for a board up business registration pursuant to the provisions of this law, to engage in any business on behalf of a board up business without obtaining an identification card from the Department. A salesman shall obtain an identification card for each registered board up business for which he or she is engaged.
- B. The fee for an identification card or renewal thereof shall be \$100 biannually for each salesman. No fee shall be charged for an application for a salesman's identification card.
- C. No identification card shall be issued unless a valid board up business registration has been issued to the board up business on whose behalf such salesman is engaged.

Section 5. Requirements.

- A. Any registered board up business shall conform to the standards of boarding and securing a property established by the federal Department of Housing and Urban Development, as attached hereto as Exhibit A, when performing work.
- B. Any person employed by or operating a board up business shall stay behind fire lines established by a fire department or police department until authorized to cross by a police officer, the chief of a fire department or a fire marshal.
- C. Any person employed by or operating a board up business shall comply with orders or directives given by police, Fire Marshal, or fire department personnel while a fire scene remains active.

Section 6. Prohibited Acts.

The following acts are prohibited:

- A. Abandonment or willful failure to perform, without justification, any contract engaged in by a registrant.
- B. Willful deviation from or disregard of contract specifications or estimates in any material respect without the consent of the contracting party.

- C. Engaging in deceptive trade practices or unconscionable trade practices in the solicitation or procurement of a contract, or in the preparation of or performance of a work estimate or invoice, or in the collection of debts incurred for services.
- D. Willful failure to comply with any lawful order, demand or requirement made by the Commissioner or the office or the local authorities having jurisdiction over the work being performed.

Section 7. Exempted Operations.

- A. Home improvement contractors duly licensed by the County of Suffolk pursuant to Chapter 563 of the SUFFOLK COUNTY CODE or similarly licensed by the jurisdiction in which the board up services are needed or being performed shall be exempted from the registration requirements and are authorized to engage in board up services in compliance with the requirements set forth in this law. Home improvement contractors and their employees shall utilize their license number for identification purposes when at a location where board up services are needed or being performed.
- B. Municipal employees boarding up structures or otherwise performing board up services in their official capacity as part of their job duties shall be exempted from the requirements of this law.

Section 8. Online Registry.

The Department shall maintain an online registry of the registered board up businesses which allows consumers to look up a business' registration status.

Section 9. Authorization for Filing Complaints.

- A. Complaints leading to investigation and penalties may be initiated by a consumer or any municipal entity which is present at locations where board up services are needed or being performed. Any submission to the Department from a municipal entity indicating that a citation was issued to a board up business or its' agents for violation of this law shall be deemed sufficient for the opening of a complaint.
- B. Complaints shall be filed with the Department and FRES. The Department and FRES shall notify one another upon receipt of a complaint to ensure appropriate communication.

Section 10. Penalties for Offenses.

- A. Any board up business which violates any of the provisions of this law shall be subject to a civil penalty of no less than \$500 nor more than \$1,000 for each violation. Each action in violation of this law shall constitute a separate and distinct violation.
- B. The Department is hereby empowered to revoke or deny a registration certificate to any board up business which fails to file all required information, files falsified information or is found responsible for more than three (3) violations during any registration period of two (2) years. Any board up business whose registration is revoked or denied may reapply after a period of two (2) years.

- C. Any civil penalty, revocation or denial of registration may only be assessed by the Commissioner following a hearing and opportunity for an alleged violator to be heard.
- D. In addition to any civil penalties imposed by the Commissioner pursuant to this law, any person who shall conduct a board up business requiring registration under this law without obtaining the registration therefor or who shall continue to engage in such business after having a registration revoked or denied shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$5,000 or imprisonment for up to one year, or both. Each such violation shall be deemed a separate offense.

Section 11. Enforcement.

This law shall be enforced by the Department of Labor, Licensing and Consumer Affairs.

Section 12. Rules and Regulations.

The Commissioner of the Department of Labor, Licensing and Consumer Affairs is hereby authorized and empowered to issue and promulgate such rules and regulations as he or she may deem necessary for the implementation and enforcement of this law.

Section 13. Applicability.

This law shall apply to all board up businesses operating in Suffolk County on or after the effective date of this law.

Section 14. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 15. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 16. Effective Date.

This law shall take effect immediately upon filing in the Office of the Secretary of State.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: